

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:05CV370-1-MU**

JUAN CARLOS MORALES, )  
                            )  
                            )  
                            Plaintiff, )  
Vs.                       )  
                            )  
LT. HONEYCUTT, et al., )  
                            )  
                            )  
                            Defendants )

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**ORDER**

**THIS MATTER** comes before the Court for initial review upon Plaintiff's Complaint pursuant to 42 U.S.C. § 1983, filed December 19, 2005.

After a careful review of the record, the Court finds that Defendants Honeycutt and Hammond should file an answer detailing Plaintiff's allegations and responding to each.

Plaintiff, however, has not alleged that the unconstitutional action executed a governmental custom or policy. Consequently, he has failed to state a claim against the Buncombe County Sheriff's Department. See Monell v. Dep't of Soc. Servs., 436 U.S. 658, (1978).

In addition, supervisory liability under § 1983 may not be predicated only on the theory of respondeat superior. See Vinnedge v. Gibbs, 550 F.2d 926, 929 (4<sup>th</sup> Cir. 1977). That is, § 1983 requires a showing of personal fault on the part of a defendant either based on the defendant's personal conduct or another's conduct in execution of the defendant's policies or customs. See Fisher v. Washington Metropolitan Area Transit Author., 690 F.2d 1133, 1142-43 (4<sup>th</sup> Cir. 1982). Because Plaintiff fails to meet this

standard with regard to his allegations against the sheriff, the sheriff is dismissed from this case.

**IT IS, THEREFORE, ORDERED**

1. The Clerk shall file this matter as a civil matter; and
2. The Clerk shall issue summons and deliver it forthwith to the U.S. Marshal who will make service of process without additional cost on Defendants Honeycutt and Hammond; and
3. Buncombe County Detention Facility and the Sheriff are DISMISSED from this matter.

SO ORDERED.

**Signed: January 12, 2006**



A handwritten signature in black ink, appearing to read "Graham C. Mullen", is written over a horizontal line.

Graham C. Mullen  
Chief United States District Judge

